

1 UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 EL PASO DIVISION

4  
5 UNITED STATES OF AMERICA ) No. EP-12-CR-2106-DB  
6 vs. )  
7 MARCO ANTONIO DELGADO ) El Paso, Texas  
                              ) May 14, 2013

8  
9 STATUS CONFERENCE

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11  
12 A P P E A R A N C E S:

13 FOR THE GOVERNMENT: MS. JUANITA FIELDEN &  
14                             MS. ANNA E. ARREOLA  
15                             Assistant United States Attorneys  
16                             700 E. San Antonio, Suite 200  
17                             El Paso, Texas 79901

18 FOR THE DEFENDANT: MR. RAY VELARDE  
19                             Attorney at Law  
20                             1216 Montana  
21                             El Paso, Texas 79901

22  
23  
24 FOR THE DEFENDANT: MR. RICHARD ESPER  
25                             Attorney at Law  
26                             801 N. El Paso, Second Floor  
27                             El Paso, Texas 79902

28  
29 Proceedings reported by stenotype. Transcript produced by  
30 computer-aided transcription.

1 (Defendant present; open court.)

2 THE COURT: The clerk will call the case.

3 THE CLERK: EP-12-CR-2106, Marco Antonio Delgado.

4 MS. FIELDEN: Good morning, Your Honor. Juanita  
5 Fielden and Anna Arreola for the Government. We're ready.

6 MR. VELARDE: Judge Briones, good morning. Ray  
7 Velarde on behalf of Marco Antonio Delgado.

8 MR. ESPER: Good morning, Judge Briones. Richard  
9 Esper on behalf of Marco Delgado.

10 THE COURT: Do you have anything to bring up, Counsel?

11 MR. ESPER: Yes, we do, Your Honor. Over the past few  
12 weeks it has become increasingly clear to both Mr. Velarde and  
13 myself that we feel that an evaluation is necessary for  
14 Mr. Delgado.

15 THE COURT: Let me tell you, I've had this happen  
16 before right before trial and I've never granted it, okay?

17 MR. ESPER: I understand.

18 THE COURT: It better be a damn good motion, I'll tell  
19 you right off the bat. This thing has been set for months.  
20 You've been consulting your client for months.

21 MR. ESPER: We have, Your Honor. This is something  
22 that's developed over the last two weeks and I think part of it  
23 is incarceration, part of is maybe other matters. But I feel  
24 we would be remiss if we didn't, and I know it's at the  
25 eleventh hour, but it's just become necessary.

1                   MR. VELARDE: Your Honor, in that regard, without  
2 going into too much detail, I can represent to the Court that I  
3 have had extensive communication with Mr. Delgado. As much as  
4 I would like to say that it's been productive, it hasn't, but  
5 being the person that I am, I didn't want to give up.

6                   THE COURT: Why did I suspect that a time was going to  
7 come to hold this trial off?

8                   MR. VELARDE: Well --

9                   THE COURT: Why did I always suspect that? I  
10 suspected it. Well, file your motion, file it under seal if  
11 you have to, but it better be damn good, because we're  
12 preparing for trial for Monday.

13                  MR. ESPER: I'll have it filed by the end of the day,  
14 Your Honor.

15                  THE COURT: I'm sorry?

16                  MR. ESPER: I'll have it filed by the end of the day.

17                  MR. VELARDE: And also, Your Honor, it's also come to  
18 our attention that at least some of the transcripts, which are  
19 going to become necessary in the trial of this case, have not  
20 been prepared. So consequently that's also another issue that  
21 needs to be --

22                  THE COURT: Ms. Fielden?

23                  MS. FIELDEN: Your Honor, I only have three  
24 transcripts that are not completed and ready, but they will be  
25 ready by --

1 THE COURT: Talk into the microphone.

2 MS. FIELDEN: I'm sorry.

3 THE COURT: I can hear you better.

4 MS. FIELDEN: Yes, sir. I provided a proposed exhibit  
5 list. I have three transcripts that as of today are not ready.  
6 They will be ready by end of the week, so it's Exhibit 33A, 39A  
7 and 56. We'll be ready and the transcripts will be ready. We  
8 won't be able to do this preliminary hearing with respect to  
9 those three transcripts, but by Monday, they will be done.

10 THE COURT: Is the Government going to use these  
11 transcripts during the trial?

12 MS. FIELDEN: Yes, sir. There's -- now, one of them  
13 has not been provided. The tapes have been provided.

14 THE COURT: Now, they've been provided though.  
15 They've been provided with the actual tape, right?

16 MS. FIELDEN: Right, the tapes have been provided, but  
17 we've had -- we had an original translation done that we were  
18 not satisfied with. We've had that one re-done and now we're  
19 reviewing them. One tape, I believe it's number 56 -- is that  
20 correct -- was not -- the agency that did it, did not do that  
21 tape, so that's the one that we're actually waiting on.

22 The other ones have all been provided in some way,  
23 shape or form, albeit not in, you know, the format that we want  
24 to have them for trial, but they've been provided all of the  
25 tapes, and at least some draft transcripts during the course of

1 the discovery except for the transcript on 56, because we  
2 didn't have it. We didn't realize we had it. But we will have  
3 it by trial time. If we go to trial on Monday, we will have it  
4 by then, and as soon as I get it, I will provide it to them.

5 THE COURT: Okay.

6 MS. FIELDEN: I've made everything available. They're  
7 welcome to come over to the office and look at everything. I  
8 handed them today the Wells Fargo business record affidavit for  
9 those three accounts. Photographs have been made available to  
10 them.

11 THE COURT: Ruben --

12 Hold on.

13 -- we're getting a bunch of feedback.

14 MS. FIELDEN: I'm sorry, am I talking too close or too  
15 far?

16 (Microphone levels being adjusted.)

17 THE CLERK: Okay.

18 MS. FIELDEN: But with respect to the evaluation,  
19 Your Honor, I've had extensive discussions, primarily with  
20 Mr. Velarde because Mr. Esper has been in trial in Austin. We  
21 have extended a plea agreement that encompassed both cases that  
22 are in your court. In my opinion, it's a very generous plea  
23 agreement. I don't know whether this Defendant really  
24 comprehends how serious the charges are against him, so I'm not  
25 going to oppose their request for an evaluation, a psychiatric

1 evaluation of this individual, but if the Court doesn't grant  
2 it, the Government is going to be ready to go.

3 THE COURT: Well, then let's get ready to -- let's  
4 presume that we're going to go on Monday.

5 MS. FIELDEN: Sure. Okay.

6 THE COURT: What do you have to present? Are you  
7 going to put on testimony?

8 MS. FIELDEN: My understanding, except for those three  
9 exhibits, the Defense is not going to have an objection to any  
10 of the recordings or the transcripts. Now, I'll have to ask  
11 them --

12 THE COURT: No, we have --

13 MS. FIELDEN: I've got 50 of them.

14 THE COURT: We have video recordings.

15 MS. FIELDEN: I have one video recording and the rest  
16 of them are audio recordings.

17 THE COURT: Okay. How many videos?

18 MS. FIELDEN: Sir?

19 THE COURT: How many videos?

20 MS. FIELDEN: One video. And the rest of them are  
21 audio recordings with the transcripts.

22 THE COURT: How many?

23 MS. FIELDEN: Well, we have --

24 THE COURT: Are these telephone conversations?

25 MS. FIELDEN: Sir?

1                   THE COURT: Are these telephone conversations?

2                   MS. FIELDEN: Yes, sir.

3                   MR. VELARDE: Yes, sir.

4                   THE COURT: Or hidden mic.?

5                   MS. FIELDEN: And some of them are by consensual  
6 meeting recordings.

7                   THE COURT: Okay.

8                   MS. FIELDEN: Most of them are telephonic recordings.  
9 I have agents here if we need to qualify them, the ones who did  
10 the quality control on all of them except those -- the three  
11 that I mentioned. Photographs that we have that we were going  
12 to submit in evidence. They've all been presented to Defense.

13                  MR. ESPER: There's a motion --

14                  THE COURT: Let's go by the way you have them in your  
15 motion. First of all, photographs.

16                  MS. FIELDEN: Photographs. Those would be exhibits --  
17 one exhibit is Exhibit Number 8, that's the photograph of one  
18 of the co-conspirators Lillian De La Cancha and Marco Delgado.  
19 That was taken from the public record and they have been  
20 identified or were identified in that.

21                  THE COURT: Number 8?

22                  MS. FIELDEN: Number 8.

23                  THE COURT: Is there any objection to Number 8,  
24 Counsel?

25                  MR. VELARDE: No, Your Honor.

1 MR. ESPER: No, Your Honor.

2 MS. FIELDEN: Okay. Then we begin with the  
3 photographs 11 through 28. Those are photographs that were  
4 taken on September 7th, the day the \$1 million was delivered to  
5 the Defendant Delgado here in El Paso. Case agent, Josh  
6 Frye [phoen.] -- I don't know what happened to him -- took  
7 those photographs and he would be able to testify as to the  
8 authenticity and that they truly and accurately reflect what  
9 they purport to reflect as it appeared on September the 7th,  
10 2007, and they have been made available to the Defense.

11 THE COURT: Are there going to be any objections to  
12 those, Counsel?

13 MR. VELARDE: No, Your Honor.

14 MR. ESPER: No, Your Honor.

15 THE COURT: No objections on 11 through 28.

16 Next?

17 MS. FIELDEN: I believe those are the only -- those  
18 are the photographs, Your Honor.

19 THE COURT: Photos, okay.

20 Now, audio -- let's go to the audio first. That's  
21 what you have here.

22 MS. FIELDEN: Okay. There are a series of audio  
23 recordings, some that were made in Atlanta, some that were made  
24 in El Paso, that occurred in what I call the first transaction,  
25 the 2007 transaction. Those would be exhibits, the audio is

1 the 30, the number and then the 30A is the transcript.

2 The 2007 transactions are Exhibits 30 through 58, 58A.

3 THE COURT: 30 through 58 and 30 through 58A?

4 MR. ESPER: Correct.

5 MS. FIELDEN: Yes, sir. Those involve the initial  
6 \$1 million seizure. Some of those conversations are between  
7 the informant who will testify and some of those conversations  
8 are between an undercover officer acting as a money launderer  
9 and he is talking with co-defendants, and some of the  
10 conversations are recordings that were done in a period of time  
11 when the Defendant was allegedly --

12 THE COURT: Wait a minute. Co-defendant or --

13 MR. VELARDE: Co-conspirator.

14 THE COURT: Co-conspirator?

15 MS. FIELDEN: I'm sorry. Unindicted co-conspirators.  
16 And then some of the -- let me rephrase that. Between the  
17 undercover officer and unindicted co-conspirators where he's  
18 portrayed himself as a person who can help recover the money,  
19 basically another money launderer and they're discussing  
20 additional transactions.

21 Then there are some recordings that were made at a  
22 time when this Defendant was allegedly cooperating and those  
23 conversations are between he and some of the cooperators -- or  
24 some of the co-conspirators and were made at the direction and  
25 under the control of agents -- law enforcement agents here, I

1 believe, in El Paso and in Atlanta.

2 THE COURT: Counsel, is there any going to be any  
3 objection to 30 through 58?

4 MS. FIELDEN: And the transcripts.

5 MR. VELARDE: Your Honor, I haven't had a chance to  
6 visit with Ms. Fielden; however, we are missing Exhibit  
7 Numbers 32, Number 39, and also I had a note here that we were  
8 missing Exhibit Number 40, as well as Exhibit Number 65.

9 MS. FIELDEN: Oh, wait. Wait. Okay. 39 and 32 are  
10 the two transcripts from this transaction that are not  
11 completed.

12 Now you said 40?

13 MR. VELARDE: 40.

14 MS. FIELDEN: I have 40. I have 42 as being blank. I  
15 have 40 as a transaction occurring September the 10th of 2007  
16 at 8:56 a.m., between the Defendant --

17 MR. VELARDE: What time?

18 MS. FIELDEN: 8:56 a.m.

19 MR. VELARDE: No, that's 8:43.

20 We'll work with her, Your Honor. But also while we're  
21 on that note, I received Exhibit Number 38A --

22 THE COURT: Let me tell you, at this point there's no  
23 objection?

24 MR. VELARDE: No, no objection.

25 THE COURT: Okay. I'm not going to admit them now.

1 MR. VELARDE: There might be --

2 THE COURT: Okay, due to the fact that we may not go  
3 to trial, I'm not going to admit anything now. I'm just going  
4 to note that you're not objecting.

5 MR. ESPER: Okay.

6 THE COURT: I'll give you an opportunity to if you  
7 have good reason to object to bring it up.

8 MR. VELARDE: Yes, sir.

9 MR. ESPER: Other than those three exhibits,  
10 Your Honor, we don't have objections and if we do, we'll lodge  
11 it more specifically.

12 (Attorneys conferring.)

13 THE COURT: Okay. That is -- those are the audio.

14 MS. FIELDEN: Those are the audio. One video out of  
15 that transaction, which is --

16 MR. VELARDE: 32.

17 MS. FIELDEN: -- 32, I believe.

18 MR. VELARDE: No objection.

19 MR. ESPER: We have no objection to that, Your Honor.

20 MR. VELARDE: Well --

21 MS. FIELDEN: And that was one made -- that is the one  
22 that takes place on September 7th here in El Paso, and it  
23 involves the Defendant, the cooperator and then it's a stop by  
24 Texas DPS troopers who basically re-arrested them for the  
25 money.

1 (Attorneys conferring.)

2 MR. VELARDE: We reviewed that, Your Honor, but we  
3 couldn't understand a lot of what was being videotaped. The --  
4 at least the audio, so subject to --

5 THE COURT: Let me tell you what I'm putting down as  
6 to 32, 39 and 40: "No objection now; will give opportunity to  
7 object after review."

8 MR. ESPER: Thank you, Your Honor.

9 THE COURT: As to the other ones, no objection.  
10 Again, I'm not admitting them now, but I'm just noting. It's  
11 not necessary, in other words, to lay a foundation for them at  
12 this time.

13 MS. FIELDEN: Yes, sir.

14 THE COURT: Okay. Video?

15 MS. FIELDEN: Video is that one, I believe, it's  
16 number 32.

17 THE COURT: 32?

18 MS. FIELDEN: Is that correct?

19 MR. VELARDE: Yes, sir.

20 THE COURT: I'm sorry, what's the number?

21 MS. FIELDEN: 32. It's number 32 and that's one of  
22 the transcripts that is still being finalized.

23 THE COURT: Is that the only video?

24 MS. FIELDEN: That is the only video, yes, sir.

25 THE COURT: Okay. No objection now; will give you an

1 opportunity to object after you review it.

2 MR. ESPER: Thank you, Your Honor.

3 THE COURT: And the transcripts.

4 MS. FIELDEN: Now, with respect -- that is all the  
5 evidence with respect to what I call the Atlanta seizure, the  
6 2007 seizure of the \$1 million.

7 Then in 2008 there's another seizure. Now there are  
8 two photographs of the money and that's Exhibits 59 and 60  
9 which --

10 THE COURT: Okay. What are we going to name those?  
11 Which seizure?

12 MS. FIELDEN: 2008 in Chicago.

13 THE COURT: Okay. 2008 Chicago seizure.

14 MS. FIELDEN: Yes, sir.

15 THE COURT: Numbers? What numbers?

16 MS. FIELDEN: 59 and 60.

17 THE COURT: Have those been made available, everything  
18 and the transcript?

19 MS. FIELDEN: Well, those are just the photographs. I  
20 thought I sent it to them --

21 THE COURT: Oh, these are photos?

22 MS. FIELDEN: Sir?

23 THE COURT: These are photos?

24 MS. FIELDEN: These two are photos, okay. And if they  
25 don't have them, I'll make them available to them. I thought I

1 sent it to them.

2 And then we have recordings --

3 THE COURT: Wait a minute. Any objection?

4 MR. VELARDE: No, sir. Well, subject to viewing them  
5 because we haven't seen them.

6 THE COURT: Okay.

7 MS. FIELDEN: Then we have additional recordings that  
8 were made through the Chicago seizure and that's going to be  
9 Government's 61 through 78A. Almost all of these are going to  
10 be with the informant. In fact, I believe all of these --

11 THE COURT: Are these all audio?

12 MS. FIELDEN: Excuse me?

13 THE COURT: Audio?

14 MS. FIELDEN: Audio. No video on these.

15 THE COURT: They've all been provided to the Defense?

16 MS. FIELDEN: Yes, sir, they have except for 56.

17 (Attorneys conferring.)

18 MR. VELARDE: We haven't received Number 65 and 71,  
19 but we'll review them.

20 THE COURT: Okay. Let me put it down on my notes. 65  
21 and 71?

22 MR. VELARDE: Yes, sir.

23 MS. FIELDEN: And it may be, Mr. Velarde, we've  
24 re-numbered some of these, so it could be that you have them  
25 and we just -- we've had to re-number some of them.

1 (Attorneys confer.)

2 THE COURT: Okay. What else do we have?

3 MS. FIELDEN: We have some e-mails that were  
4 originally sent to Marco Delgado and then he either forwarded  
5 them to Victor Pimental -- well, he forwarded all of them. I  
6 believe that we are going to have those entered through  
7 Mr. Pimental.

8 THE COURT: E-mails?

9 MS. FIELDEN: E-mails, yes, sir.

10 THE COURT: Number?

11 MS. FIELDEN: Those would be 80 through 87. And then  
12 in addition -- and that's the e-mails. And they have  
13 translations with them.

14 And then finally there are some IRS records which I  
15 have listed --

16 THE COURT: Okay. Let me go to the e-mails.

17 Any objections at this time?

18 MR. VELARDE: There might be as to one of them,  
19 Your Honor. An email from a co-conspirator to Marco Delgado,  
20 which goes into an extraneous that would be challenged and  
21 objected to.

22 THE COURT: Do you have a number?

23 MR. VELARDE: I don't have a number, but I'm sure  
24 it's--

25 MS. FIELDEN: I believe it is going to be 82. And

1       that is an email that was initially initiated by Marco Delgado  
2       to a co-conspirator and then she replies to the Defendant and  
3       then he forwarded it to Pimental, and I believe it's on  
4       February the 3rd of 2009.

5           THE COURT: Went to him and he forwarded it?

6           MS. FIELDEN: Well, he initially -- the Defendant  
7       initially sent to the co-conspirator a little blurb. She  
8       responds to him and then he responds -- no. She responds to  
9       him and the Defendant forwarded it to the cooperator.

10          THE COURT: Okay. So it may have some extraneous?

11          MR. VELARDE: Yes, sir.

12          MR. ESPER: Yes, sir.

13          MS. FIELDEN: It discusses -- allegedly di- -- it  
14       discusses the alleged murder of one of the other  
15       co-conspirators.

16          THE COURT: Well, better redact it. If I let it in,  
17       that part is not going to come in.

18          MR. VELARDE: Cannot come --

19          MS. FIELDEN: It was the murder that was -- what  
20       the -- the murder was because of the Defendant's actions.

21          MR. VELARDE: Allegedly.

22          MS. FIELDEN: According to the co-conspirator's  
23       statement to him.

24          MR. VELARDE: Our objection, Your Honor --

25          THE COURT: Any mention of that in the Indictment?

1 MR. VELARDE: No.

2 MS. FIELDEN: No.

3 THE COURT: Well, we'll take it up. That has to do  
4 with Number 82?

5 MS. FIELDEN: Yes, sir.

6 Going along with those e-mails, there are two  
7 self-proving affidavits from -- that are Exhibits 1, 1A, 2, and  
8 2A that are from --

9 THE COURT: 1, 1A, 2 and 2A?

10 MS. FIELDEN: Yes, sir. Those are the -- those are  
11 from Google and from AOL. AOL is the Internet provider for the  
12 Defendant and Google is the Internet provider for another one  
13 of the co-conspirators, not the one mentioned in that  
14 particular Exhibit 82, but a different co-conspirator.

15 THE COURT: Okay. Is there going to be any objection  
16 to those, Counsel?

17 MR. VELARDE: I don't foresee one.

18 THE COURT: "No objection now," okay, in my notes.

19 Go ahead.

20 MS. FIELDEN: And then finally, we have some IRS  
21 records, the Defendant's IRS records from 2007 and 2008. I  
22 believe we have those certified copies that we got from the  
23 IRS.

24 THE COURT: Numbers?

25 MS. FIELDEN: Sir?

1 THE COURT: Numbers?

2 MS. FIELDEN: That would be 7A and 7B.

3 THE COURT: IRS certified records.

4 MS. FIELDEN: Yes, sir. 2007, 2008 basically 1040  
5 forms for the Defendant.

6 THE COURT: Do you anticipate an objection, Counsel?

7 MR. VELARDE: No, Your Honor.

8 MR. ESPER: No, Your Honor.

9 THE COURT: Okay. What else do we have, Ms. Fielden?

10 MS. FIELDEN: Finally, Exhibits 9 and 10. 9 is going  
11 to be a settlement agreement that the cooperator will testify  
12 was provided to him by the Defendant as a means for justifying  
13 the \$1 million. It has a particular cause number on it.

14 10 is a certified -- or certified copies of the actual  
15 true and correct lawsuit that is filed under this same number  
16 that came from the El Paso County Courthouse and those are  
17 certified documents.

18 THE COURT: Certified by -- certified by the County,  
19 El Paso.

20 MS. FIELDEN: Yes, sir. The county clerk.

21 THE COURT: Or district clerk? It should be the  
22 district clerk.

23 MS. FIELDEN: A moment, Your Honor.

24 (Ms. Fielden confers with co-counsel.)

25 If they're not done by the district clerk we will get

1 them done by the district clerk.

2 MR. ESPER: Your Honor, the first lawsuit that was  
3 apparently in the hands of the cooperator at the time that he  
4 was stopped in Atlanta is a fictitious lawsuit. It's not a --

5 THE COURT: I understand that from the Indictment.

6 MR. ESPER: Yeah. And so therefore I don't know how  
7 that could be certified, but --

8 MS. FIELDEN: No. No. That is -- I'm not saying that  
9 one is certified.

10 MR. ESPER: Okay. Okay.

11 MS. FIELDEN: I'm saying that number 10, we have the  
12 actual --

13 MR. ESPER: The actual -- with the right case number  
14 that corresponds to the case number that's on the fictitious  
15 lawsuit.

16 MS. FIELDEN: Yes, that is correct.

17 MR. ESPER: Okay.

18 THE COURT: I see. You anticipate an objection now?

19 MR. VELARDE: No, sir.

20 MR. ESPER: No, Your Honor.

21 THE COURT: What else do we have?

22 MS. FIELDEN: Let's see. Did we discuss the Wells  
23 Fargo affidavits? Did we discuss those?

24 THE COURT: No. We only discussed 1, 1A, 2 and 2A.  
25 Who are they from?

1 MS. FIELDEN: Sir?

2 THE COURT: They're business records, I think?

3 MS. FIELDEN: Yes, sir.

4 THE COURT: From?

5 MS. FIELDEN: 1, 1A, 2 and 2A -- 1 is from -- 1 and 1A  
6 -- 1 is the Certificate of Authenticity from Google.

7 THE COURT: Oh, that's right.

8 THE CLERK: And 1A is the actual documents that we  
9 received for --

10 THE COURT: That's right. Yeah, you did mention them.  
11 Google. And the other one was --

12 MS. FIELDEN: AOL, which is the Defendant's.

13 THE COURT: Okay.

14 MS. FIELDEN: Okay. Then Exhibits 3, 3A, 3B and 3C.  
15 3 is a business records affidavit from Wells Fargo.

16 3A is the record of an IOLTA account for the Defendant  
17 that was used to deposit some of the money.

18 THE COURT: Wells Fargo too?

19 MS. FIELDEN: They're all from Wells Fargo. All -- 3A  
20 and 3B and 3C are all Wells Fargo accounts and they are all  
21 covered under the same affidavit.

22 And then 3B and 3C are two separate accounts of the  
23 Defendant's paramour where some of the money was also run  
24 through.

25 THE COURT: Also Wells Fargo?

1 MS. FIELDEN: Also Wells Fargo.

2 THE COURT: Business record?

3 MR. ESPER: Correct.

4 THE COURT: Do you anticipate an objection now,  
5 Counsel, on that?

6 MR. ESPER: No, they're business records affidavits.

7 THE COURT: Okay.

8 MS. FIELDEN: And then Number 4 is a Wells Fargo  
9 receipt that was obtained by the cooperator when he actually  
10 deposited money into the IOLTA account of the Defendant. So  
11 there's not a business record affidavit for that. That's  
12 just--

13 THE COURT: He'll testify.

14 MS. FIELDEN: He'll testify.

15 THE COURT: I presume he's going to testify?

16 MS. FIELDEN: He is.

17 THE COURT: I'll let you object --

18 MR. VELARDE: There's no objection.

19 THE COURT: -- at the time.

20 MR. VELARDE: There won't be an objection.

21 THE COURT: Okay.

22 MS. FIELDEN: Okay. Let me check with my co-counsel  
23 to make sure I covered everything.

24 (Ms. Fielden conferring with co-counsel.)

25 MS. FIELDEN: I believe that's everything, Your Honor.

1           THE COURT: Counsel, as I've indicated, I'm not  
2 admitting them now. If anything comes up, I'll let you object.

3           MR. ESPER: Thank you.

4           THE COURT: Okay.

5           MR. ESPER: Your Honor, there was a --

6           THE COURT: I've got my notes. But before you bring  
7 them in, you obviously will have to move for admission,  
8 Ms. Fielden.

9           MS. FIELDEN: Yes, sir.

10          MR. ESPER: Your Honor, the Government -- one other  
11 matter. The Government had filed a Motion in Limine --

12          THE COURT: Yes.

13          MR. ESPER: -- which we filed a response to. I think  
14 most of her requests are --

15          THE COURT: Standard. They're not objectionable.

16          MR. ESPER: Standard stuff. I mean --

17          THE COURT: You had one that you responded to.

18          MR. ESPER: Yes, Your Honor. And I think that the  
19 Government does not want the Defense to cross-examine witnesses  
20 concerning the Defendant's cooperation and what transpired  
21 after that, and certainly I think that any time a witness --  
22 any time a person cooperates, there certainly can be imputed to  
23 that Defendant either guilty knowledge or perhaps that the  
24 person was not aware of what was going on. And I think it goes  
25 towards one of the elements of the offense, which is knowledge,

1 and I think Counsel would be deprived and the Defendant would  
2 be deprived of the right to a fair trial and to the effective  
3 cross-examination of witnesses if we weren't allowed to go into  
4 the circumstances surrounding the cooperation, what transpired  
5 after that over the -- I don't know how many months  
6 thereafter -- and I think it is relevant to and determinative  
7 of one of the elements of the offense which is his state of  
8 mind.

9 THE COURT: I'm not going to make a ruling at this  
10 time, but I'm not going to grant Paragraph 1D of the Motion in  
11 Limine.

12 MR. ESPER: 1D.

13 MR. VELARDE: 1D.

14 MR. ESPER: Correct.

15 MR. VELARDE: Your Honor, as the Court is well aware,  
16 there's also another case pending --

17 THE COURT: Right.

18 MR. VELARDE: -- alleged in a separate Indictment. We  
19 would request that no reference be made as to the matters  
20 involved in that Indictment in connection with the prosecution  
21 of this case. I guess we could urge that by way of a motion in  
22 limine of sorts at this point.

23 MS. FIELDEN: We don't intend to offer it in our  
24 case in chief, but certainly if the Defendant takes the stand,  
25 I believe we are entitled to a full cross-examination of him.

1                   THE COURT: Well, he hasn't been convicted,  
2 Ms. Fielden, on the other one.

3                   MS. FIELDEN: There's a lot of things that he's done  
4 that he hasn't been convicted of, Your Honor.

5                   THE COURT: Well -- well, I will make --

6                   MS. FIELDEN: I understand.

7                   THE COURT: For the time being, I'm going to grant the  
8 Motion in Limine. You will approach if anything like that  
9 comes up. If you want to bring anything in, you'll approach.

10                  MS. FIELDEN: Okay.

11                  THE COURT: Okay?

12                  MS. FIELDEN: But if he places his credibility in  
13 evidence, I mean, you know, he comes in and said I'm a good,  
14 honest man.

15                  THE COURT: Oh, I'm sure Counsel is going to advise  
16 him on that, Ms. Fielden.

17                  MS. FIELDEN: I'm not sure -- well, okay, Your Honor.  
18 I believe that's one of the reasons why the Government agrees  
19 that the psychiatric evaluation probably would be beneficial.

20                  THE COURT: Well, I'll take that up when it comes up,  
21 Counsel, but file it as soon as possible.

22                  MR. ESPER: I will, Your Honor.

23                  THE COURT: If it does go to trial, do you anticipate  
24 it's going to take the whole week?

25                  MS. FIELDEN: Oh, yes, sir.

1 THE COURT: For your part?

2 MS. FIELDEN: Yes, sir.

3 THE COURT: For your part?

4 MS. FIELDEN: Yes, sir.

5 THE COURT: So we could be going into the second week?

6 MR. VELARDE: Very likely.

7 MS. FIELDEN: Is Friday --

8 THE COURT: Friday is not a furlough Friday.

9 MS. FIELDEN: It is not?

10 THE COURT: No. Furlough Friday is this week, right,

11 Ruben?

12 THE CLERK: This week.

13 THE COURT: Yeah. Furlough Friday is this week, not  
14 next week.

15 MR. ESPER: And, of course, next week -- Monday is a  
16 federal holiday.

17 MS. FIELDEN: No, the following week is.

18 MR. ESPER: The week of the 27th, I'm sorry.

19 MS. FIELDEN: I think if we pick a jury in the morning  
20 and start that afternoon, I believe we can be finished in that  
21 one -- in that week. Whether it will be able to go to the jury  
22 that week, I don't know, but I believe the evidence will be  
23 completed by that time.

24 THE COURT: So I can tell the jury more likely they'll  
25 be here until the second week?

1 MS. FIELDEN: I think we should err on the side of  
2 caution, yes, sir, and tell them that.

3 MR. ESPER: I would think if it went into a second  
4 week, Your Honor, maybe a day, two days at the most.

5 THE COURT: Okay. Do you-all have anything you want  
6 to preadmit or get a ruling or get at least an indication from  
7 the Government whether they are going to object on anything?

8 MR. VELARDE: No, not at this point.

9 MR. ESPER: Not at this point, Your Honor, but we will  
10 apprise the Court in advance so if the Court needs to  
11 reschedule something before Monday morning.

12 THE COURT: Okay. How many -- I don't think I've got  
13 a witness list, but how many witnesses do you anticipate you'll  
14 put on?

15 MS. FIELDEN: I think we have seven. I anticipate  
16 we're going to start out with the cooperator. He's probably  
17 going to be on the stand most of Monday or starting Monday and  
18 most of Tuesday. We have a couple of agents that are going to  
19 be fairly short witnesses. We have one -- the undercover agent  
20 will be very -- probably very long, and then we'll probably end  
21 up -- assuming that we have no objections with any of the --  
22 any of the admissibility of the tapes -- and we don't have to  
23 put on all of that, we should be able to move fairly quickly.

24 THE COURT: Is Ms. Arreola going to be second chair  
25 with you?

1 MS. FIELDEN: Yes, sir.

2 THE COURT: Okay. Anything else we need to take up  
3 now?

4 MR. ESPER: No, Your Honor.

5 MR. VELARDE: No.

6 THE COURT: For the Government?

7 MS. FIELDEN: No, Your Honor.

8 THE COURT: Defense?

9 MR. VELARDE: Not at this point.

10 THE COURT: Not at this point. Okay.

11 MR. VELARDE: Thank you very much, Your Honor.

12 MR. ESPER: Thank you, Your Honor.

13 THE COURT: Okay. We'll be in recess then. You may  
14 be excused.

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## CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: August 30, 2013

/s/ Maria del Socorro Briggs

Maria del Socorro Briggs